

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202

March 26, 2003

Honorable Sara Kyle
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

RE: In Re: Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges So As to Permit it to Earn a Fair and Adequate Rate of Return on Its Property Used and Useful in Furnishing Water Service to Its Customers
Docket No. 03-00118

Dear Chairman Kyle:

Enclosed is an original and thirteen copies of the Response to the Tennessee Regulatory Authority's Request Concerning the Audit Authority of the Consumer Advocate & Protection Division of the Office of the Attorney General. Copies are being sent to all parties of record. If you have any questions, kindly contact me at (615) 532-3382. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Shilina B. Chatterjee".

Shilina B. Chatterjee
Assistant Attorney General

Enclosures

cc: All Interested Parties

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IN RE:

**PETITION OF TENNESSEE AMERICAN
WATER COMPANY TO CHANGE AND
INCREASE CERTAIN RATES AND
CHARGES SO AS TO PERMIT IT TO EARN
A FAIR AND ADEQUATE RATE OF
RETURN ON ITS PROPERTY USED AND
USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS**

DOCKET NO. 03-00118

Comes Paul G. Summers, the Attorney General for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of Attorney General (hereinafter “Consumer Advocate ”), pursuant to Tenn. Code Ann. § 65-4-118 et seq.

1. On March 12, 2003, a status conference was held in this matter to (1) dispose of any outstanding petitions to intervene; (2) establish a procedural schedule; and (3) resolve any other pending matters. At the status conference, Ron Jones, Director, acting as the Pre-Hearing Officer granted our Petition to Intervene in this docket pursuant to Tenn. Code Ann. § 4-5-310(a).

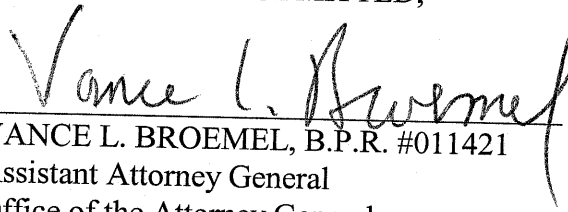
2. Additionally, during the status conference, the Pre-Hearing Officer asked whether the Consumer Advocate could conduct an on-site audit of Tennessee-American Water Company located in Chattanooga, Tennessee. Thereafter, on March 17, 2003, the Pre-Hearing Officer

issued an Order on the March 12, 2003 Status Conference and requested that Consumer Advocate file a statement concerning its audit authority.

3. In response thereto, the Consumer Advocate states that Tenn. Code Ann. §65-4-118 et seq. created a Consumer Advocate Division of the Office of the Attorney General and set forth the Consumer Advocate Division's duties and authorities. The General Assembly did not specify if the Consumer Advocate Division had audit authority. Nevertheless, the Consumer Advocate Division cannot perform audits because it is bound by Attorney General Opinion No. 95-44. The opinion states that the audit of a public utility is not within the duties or authority of the Consumer Advocate and they have not been given a legislative sanction to perform audits under the statute.¹

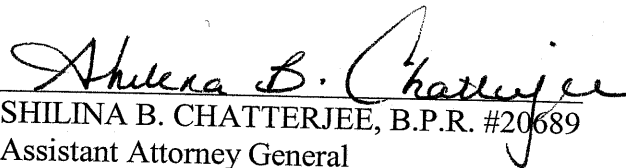
4. Lastly, the Consumer Advocate Division does not have audit authority separate from its participation in the discovery process of this case. Should the Consumer Advocate Division wish to do an audit, it would have to request such, through the discovery process. The Consumer Advocate Division does not wish to perform an audit at this time. The Consumer Advocate believes that after taking sufficient discovery in this docket an audit will not be necessary.

RESPECTFULLY SUBMITTED,


VANCE L. BROEMEL, B.P.R. #011421
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
(615) 741-8733

¹

Attached hereto as Exhibit A.


SHILINA B. CHATTERJEE, B.P.R. #20689

Assistant Attorney General

State of Tennessee

Office of the Attorney General

Consumer Advocate and Protection Division

P.O. Box 20207

Nashville, Tennessee 37202

(615) 532-3382

Dated: March 26, 2003

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or facsimile on March 26, 2003.

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Assistant Attorney General

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Opinion No. 95-44 - 1995 Tenn. AG LEXIS 43

OFFICE OF THE ATTORNEY GENERAL OF TENNESSEE

95-44

1995 Tenn. AG LEXIS 43

April 25, 1995

Consumer Advocate Division's inability to audit a public utility

QUESTION

Whether the Consumer Advocate Division can audit a public utility?

OPINION

No. It is the opinion of this Office that audits are regulatory functions not within the duties or authority of the Consumer Advocate Division, See T.C.A. § 65-4-118(c)(1) *et seq.*

ANALYSIS

This request asks whether audits or other investigatory and regulatory functions may be performed by the Consumer Advocate Division of the Public Service Commission under the authority of its enabling legislation, 1994 Pub. Acts Ch. 913, now codified at T.C.A. § 65-4-118(c) *et seq.* It is the opinion of this Office that T.C.A. § 65-4-118(c) *et seq.* does not sanction the performance of audits or other investigatory and regulatory functions by the Consumer Advocate.

The Consumer Advocate is a separate division within the Commission. T.C.A. § 65-4-118(c)(1). The Consumer Advocate is funded through the Commission's public utility account, T.C.A. § 65-4-118(c)(5), but placed under the control of the Attorney General and Reporter, and required to maintain an office physically separate from the Commission's offices.

T.C.A. §§ 65-4-118(c) (1), 65-4-118(c)(2)(a), 65-4-118(c) (5).

The enabling legislation suggests that the Consumer Advocate Division was created to address concerns the General Assembly had relative to the representation of Tennessee consumers of public utilities before the Commission, and before all other tribunals. The preamble to 1994 Pub. Acts Ch. 913 reads as follows:

WHEREAS, The Tennessee Public Service Commission is required in most cases to conduct trial-type hearings before making a final decision regarding a utilities rate or service- practices; and

WHEREAS, The staff of the Commission is usually the only party in these hearings representing the interests of Tennessee consumers; and

WHEREAS, If the commission issues a decision in favor of its staff, the affected utility has the right to petition the courts for review of the agency's order, but if the commission decides in favor of the utility, the commission's staff has no standing to challenge the agency's decision in court; and

WHEREAS, Tennessee is the only southern state and one of only three states in the nation without an independent consumer advocate or Attorney General to represent the interests of utility ratepayers in regulatory and judicial proceedings; and

WHEREAS, The General Assembly desires to establish within the commission an independent office of consumer advocate without spending additional state funds and without diminishing the commission's ability to execute its statutory responsibilities; now, therefore.

Prior to the passage of this Act, the Commission's staff often spoke for the interests of Tennessee consumers, but the staff lacked standing to appeal any decision rendered by the Commission. Accordingly, the General Assembly created the Consumer Advocate Division in T.C.A. § 65-4-118(c) *et seq.* to represent Tennessee consumers of public utilities. In furtherance of that representational role, the Consumer Advocate was empowered, with the approval of the Attorney General and Reporter, to intervene in or initiate proceedings before courts or administrative tribunals, and to appeal the decisions of same. T.C.A. § 65-4-118(c)(2)(A),(c)(3). Furthermore, the Advocate was expressly empowered to petition the Commission to obtain information from a utility in order to initiate a proceeding, or to request information from the Commission for the same purpose. T.C.A. § 65-4-118(c)(2)(B). Finally, the Advocate was empowered to enter into nondisclosure agreements regarding trade secrets or other confidential commercial information. T.C.A. § 65-4-118(c)(4).

The narrow issue in this instant request is whether the power to audit a public utility is included in the power to obtain information vested in the Consumer Advocate by T.C.A. § 65-4-118(c)(2)(B). The pertinent subsection reads as follows:

(B) If the consumer advocate division concludes that it is without sufficient information to initiate a proceeding, it may petition the commission, after notice to the affected utility, to obtain